

NOT FOR PUBLICATION

DEC 10 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

TIMOTHY ALLAN DUNLAP,

Plaintiff - Appellant,

v.

JAY GREEN; et al.,

Defendants - Appellees.

No. 06-35818

D.C. No. CV-04-00223-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted December 3, 2007**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Timothy Allan Dunlap, an Idaho state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that prison officials denied him equal protection by housing him in prison mental

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

health units instead of the prison's general population. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Valdez v. Rosenbaum*, 302 F.3d 1039, 1043 (9th Cir. 2002), and we affirm.

The district court properly granted summary judgment on Dunlap's equal protection claim because he presented no evidence to controvert defendant's evidence of a rational basis for housing him in prison mental health units. *See Glauner v. Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999) (applying a "rational basis" test to a prisoner's equal protection claim because "prisoners are not a suspect class" and no fundamental constitutional right was at issue).

AFFIRMED.